

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

NO. CR. S-99-0433 WBS

Plaintiff,

v.

ORDER RE: MOTION TO RECUSE

JOHN THAT LUONG,  
MINH HUYNH,  
HOANG AI LE, and  
THONGSOUK THENG LATTANAPHOM,

Defendants.

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After I have worked on this case for nine years, ruled on over 200 motions, and presided over more than forty days of jury trial, defendants move to disqualify me as the trial judge. The grounds for the motion fall into essentially three categories: (1) rulings and statements I have made in this case; (2) rulings I made in other cases; and (3) the fact that I was previously victim of a crime which defendants characterize as similar to those charged in this case.

Rulings and Statements in this Case

Defendant Minh Huynh complains that I (1) denied his

1 pretrial motions, (2) intimidated him into giving up his right to  
2 represent himself by calling him "stupid," (3) denied his  
3 discovery motion, (4) denied him a psychiatrist, (5) rejected a  
4 requested instruction, and (6) inappropriately told the jury that  
5 he was responsible for the twelve-year delay in getting to trial  
6 because he kept firing his lawyers. Defendant John That Luong  
7 adds the grounds that (1) I overruled his attorney's objection to  
8 certain of the prosecutor's comments in closing argument and (2)  
9 in ruling on his attorney's motion to withdraw after representing  
10 him through two trials I suggested that he and his attorney were  
11 acting in concert to obstruct the proceedings.

12         Disqualification of a district judge for bias or  
13 prejudice is controlled by 28 U.S.C. § 144. Previously, courts  
14 construed section 144 to require that to be disqualifying the  
15 alleged bias and prejudice must stem from an extrajudicial source  
16 and result in an opinion on the merits on some basis other than  
17 what the judge learned from his participation in the case. See  
18 United States v. Grinnell Corp., 384 U.S. 563, 583 (1966); see  
19 also, e.g., United States v. Carignan, 600 F.2d 762, 763 (9th  
20 Cir. 1979) ("28 U.S.C. § 144 . . . requires that the bias or  
21 prejudice of the judge be twofold: (1) personal, i.e. directed  
22 against the party, and (2) extra-judicial.") (citations omitted).  
23 The Supreme Court, however, has now explained that the  
24 "extrajudicial source" is only a factor, albeit "significant (and  
25 often determinative)." Liteky v. United States, 510 U.S. 540,  
26 551, 555 (1994) ("The fact that an opinion held by a judge  
27 derives from a source outside judicial proceedings is not a  
28 necessary condition for 'bias or prejudice' recusal, since

1 predispositions developed during the course of a trial will  
2 sometimes (albeit rarely) suffice.").

3 I did deny Minh Huynh's pretrial motions because they  
4 had no merit, and I refused the jury instruction to which he  
5 refers. I do not recall denying any request for a psychiatrist,  
6 but the docket sheet in this case contains 1184 entries, and it  
7 is possible that over the nine year course of this litigation I  
8 denied such a request. (I do remember granting his requests to  
9 be examined by a dentist and to have a doctor look into an  
10 alleged abdominal problem about which he was complaining.) Nor  
11 do I recall ever telling the jury at any time before they reached  
12 a verdict that Minh Huynh was responsible for the delay in  
13 bringing the case to trial. In fact he, as well as the other  
14 defendants, did cause much of the delay by serially moving to  
15 fire their attorneys as each of the trial dates approached, and I  
16 may well have explained that to the jury after the trial was  
17 over, because I believe they have a right to know why the wheels  
18 of the justice system in which they have been asked to  
19 participate appear to move so slowly.

20 I also do not recall using the word "stupid" in the  
21 context of his request to represent himself pursuant to Faretta  
22 v. California, 422 U.S. 806 (1975). If I did, the record will  
23 speak for itself and will properly reflect the context. The law  
24 requires me to explain the dangers and disadvantages of self-  
25 representation to the defendant. Snook v. Wood, 89 F.3d 605, 613  
26 (9th Cir. 1996). The benchbook which I use (*Benchbook for U.S.*  
27 *District Judges*, Fifth Edition 2007) was provided by the Federal  
28 Judicial Center, and suggests that in taking a Faretta waiver the

1 court should "say to the defendant something to this effect:"

2 I must advise you that in my opinion, a trained lawyer would  
3 defend you far better than you could defend yourself. I  
4 think it is unwise of you to try to represent yourself. You  
5 are not familiar with the law. You are not familiar with  
6 court procedure. You are not familiar with the rules of  
7 evidence. I strongly urge you not to try to represent  
8 yourself.

9 Id., at 7. It is quite possible that in giving this advice I  
10 used, or more likely defendant interpreted my remarks to use, the  
11 word "stupid." However, whatever I said did not intimidate Minh  
12 Huynh to give up his right to self representation as he alleges,  
13 because notwithstanding my admonitions he elected after the  
14 Faretta colloquy to represent himself. It was not until after he  
15 was well into the trial, apparently recognizing his own  
16 shortcomings as a lawyer, that he changed his mind and asked the  
17 court to allow his advisory counsel to represent him for the  
18 remainder of the trial.

19 Because "judicial rulings alone almost never constitute  
20 a valid basis for a bias or partiality motion,"<sup>1</sup> I do not believe  
21 that any of the above grounds are sufficient to disqualify me as  
22 the trial judge in this case.

#### 23 Rulings in Other Cases

24 In his Reply to the government's opposition to his  
25 motion, Minh Huynh refers to the sentence I imposed upon Huy Chi  
26 (Jimmy) Luong in the companion case of United States v. Luong, et  
27 al., Cr. No. S-96-350, which he says, without any authority, was

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28 <sup>1</sup> Liteky, 510 U.S. at 545 (citation omitted); accord  
United States v. Azhocar, 581 F.2d 735, 739 (9th Cir. 1978)  
("Adverse rulings do not constitute the requisite bias or  
prejudice of § 144. . . . There is thus no merit to appellant's  
claim of bias based on adverse rulings.") (citations omitted).

1 "30 years more than any comparable cases with the same offense  
2 and characteristics." He also attaches a newspaper article  
3 referring to the sentence I imposed upon a defendant in another,  
4 unrelated, case involving the death of a nine-year old Viet  
5 Nameese girl from a firebomb which the defendant in that case  
6 threw through the window of the home in which she was sleeping.  
7 (United States v. Tu Minh Truong, Cr. No. S-00-211.)

8 Rulings in other cases are treated the same, for  
9 purposes of a motion to disqualify, as rulings in this case. See  
10 Liteky, 510 U.S. at 545, 555 ("[O]pinions formed by the judge on  
11 the basis of facts introduced or events occurring in the course  
12 of the current proceedings, or of prior proceedings, do not  
13 constitute a basis for a bias or partiality motion unless they  
14 display a deep-seated favoritism or antagonism that would make  
15 fair judgment impossible.") (emphasis added); see also Lewis v.  
16 Tuscan Dairy Farms, Inc., 25 F.3d 1138, 1141 (2d Cir. 1994)  
17 (rejecting an argument for bias that was based on the judge's  
18 ruling in an unrelated case in which the judge had imprisoned the  
19 defendant and held him in contempt of court).

20 I should not have to justify every sentence I have ever  
21 imposed in order to defend against a charge of bias. Suffice it  
22 to say I do not believe the previous instances cited by  
23 defendants are sufficient to display the kind of deep-seated  
24 favoritism or antagonism that would make fair judgment  
25 impossible.

#### 26 Victim of a Crime

27 The final ground urged for recusal is the fact that in  
28 1997 I was the victim of an allegedly similar crime. Initially,

1 there is a question as to how similar that crime was to the  
2 crimes charged in this case. The crimes charged here are  
3 conspiracy to commit a robbery affecting interstate commerce; use  
4 of a firearm during a crime of violence; and death caused by use  
5 of a firearm during a crime of violence. The facts here involved  
6 a home invasion robbery with the object of torturing the  
7 residents to gain access to their business.

8 In contrast, the incident involving me was not a  
9 robbery affecting interstate commerce, nor did it involve the use  
10 of a firearm. It did not even involve a home invasion. The  
11 facts of that incident are summarized in the attached copy of a  
12 news article which appeared in The Sacramento Bee the following  
13 morning. Two young men were attempting to burglarize my house  
14 when I surprised them by coming home early. Although it  
15 technically turned into a robbery at that point, it was originally  
16 intended as a residential burglary. I was not beaten or  
17 tortured, as were the victims in this case. Rather, the object  
18 of the offense was simply to steal my belongings from my house.  
19 The two young men were eventually apprehended and charged with  
20 simple residential burglary, and my recollection is that they  
21 were each sentenced by a state judge to twelve months in the  
22 county jail.

23 Assuming some similarity between the crimes, the more  
24 important question is whether having been the victim of that  
25 crime disqualifies me from presiding as the judge in this case.  
26 Precedent with respect to judicial recusal when judges are  
27 victims of a violent crime similar to an action before them is  
28 scarce. See Mann v. Thalacker, No. 95-3008, 1996 WL 33423405, at

1 \*9 (N.D. Iowa Oct. 9, 1996) ("This court was unable to find any  
2 case law dealing with a judge's duty to recuse when he has been a  
3 victim of a crime similar to that for which the defendant is  
4 being tried."); United States v. Fiat Motors of N. Am., Inc., 512  
5 F. Supp. 247, 250-51 (D.D.C. 1981) (identifying reluctance to  
6 recuse the judge presiding over an automobile recall case who  
7 himself was a past victim of an auto accident because "no case  
8 authority directly on point or similar to the situation here,  
9 involving disqualification or recusal, has been found").

10 Defendants rely upon the doctrine of "implied bias,"  
11 which is more commonly cited as a ground for juror  
12 disqualification, and allows for "bias to be implied or presumed  
13 from the 'potential for substantial emotional involvement,  
14 adversely affecting impartiality,' inherent in certain  
15 relationships." Tinsley v. Borg, 895 F.2d 520, 527 (9th Cir.  
16 1990) (quoting United States v. Allsup, 566 F.2d 68, 71 (9th Cir.  
17 1977)). Courts appear willing to apply that same doctrine when  
18 determining the propriety of a motion to recuse a judge. See  
19 Liteky, 510 U.S. at 552 (equating the process of weighing  
20 judicial impartiality for recusal purposes with the inquiry into  
21 a prospective juror's impartiality for disqualification  
22 purposes); Mann, 1996 WL 33423405, at \*9 ("[A]nalogous cases  
23 involving challenges for cause for potential jurors are therefore  
24 instructive in discerning whether a judge should recuse himself  
25 in this situation.").

26 In determining whether a potential juror--who himself  
27 or herself was a past victim of a similar violent crime or  
28 conduct--could be challenged for bias, courts base their

1 decisions on considerations such as "the person's assurances of  
2 objectivity, understanding of the concept of the presumption of  
3 innocence and reasonable doubt, and recognition that the accused  
4 in the present case had not been involved in the prior crime  
5 against the juror." Id. Additional factors for consideration  
6 that are more applicable to a recusal determination include "the  
7 length of time since the victimization, the similarity of the  
8 incidents, and the juror's [or judge's] lack of acquaintance with  
9 the present victim." Id.

10 A key factor in this analysis seems to be "the  
11 similarity of the incidents." See Allsup, 566 F.2d at 71 ("That  
12 [people] will be prone to favor that side of a cause with which  
13 they identify themselves either economically, socially, or  
14 emotionally is a fundamental fact of human character." (quoting  
15 Kiernan v. Van Schaik, 347 F.2d 775, 781 (3d Cir. 1965))). The  
16 Ninth Circuit has granted a new trial on the basis of a juror's  
17 implied bias due to "the similarity of the incidents" at least  
18 three times.

19 In Allsup, the court presumed that two prospective  
20 jurors in a bank robbery trial were biased because they were  
21 employed by the bank that had been robbed, though they worked at  
22 a different branch. Id. at 71-72 ("The employment relationship  
23 coupled with a reasonable apprehension of violence by bank  
24 robbers leads us to believe that bias of those who work for the  
25 bank robbed should be presumed."). In United States v. Eubanks,  
26 591 F.2d 513 (9th Cir. 1979), a juror at a heroin distribution  
27 trial was presumed biased because his sons were heroin addicts  
28 who were in prison for crimes committed to obtain heroin. Id. at



1 517 ("Regardless of the reason for [the juror's] nondisclosure,  
 2 we conclude that his sons' tragic involvement with heroin bars  
 3 the inference that Collins served as an impartial juror.").

4 Finally, in Dyer v. Calderon, 151 F.3d 970 (9th Cir.  
 5 1998), a Ninth Circuit en banc panel vacated a prior decision  
 6 partially based on the implicit bias presumed from a juror's  
 7 failure to disclose that her brother was killed in a similar  
 8 manner as the defendant had allegedly murdered the victim. Id.  
 9 at 1982 ("After watching a number of potential jurors disclose  
 10 relatively minor crimes and get dismissed, [the juror] chose to  
 11 conceal a very major crime--the killing of her brother in a way  
 12 that she knew was very similar to the way [defendant] was accused  
 13 of killing his victims."). But see Tinsley v. Borg, 895 F.2d  
 14 520, 529 (9th Cir. 1990) (no implied bias where juror at rape  
 15 trial once provided professional counseling services to rape  
 16 victims).

17 I have been able to find only four cases that dealt  
 18 directly with a judicial decision whether to recuse a judge  
 19 because he or she was once a victim of circumstances similar to  
 20 the matter before the bench. Those cases are set forth in the  
 21 margin below.<sup>2</sup> Notably, none of the judges recused themselves,

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22  
 23 <sup>2</sup> In United States v. Fiat Motors of N. Am., Inc., 512 F.  
 24 Supp. 247 (D.D.C. 1981), the court held that the mere fact the  
 25 judge presiding over an action forcing an automobile distributor  
 26 to recall its vehicles had been involved in an automobile  
 27 accident which had eventually resulted in loss of one of his  
 28 legs--and additionally that he had filed a civil complaint as  
 result of the accident--did not show bias or raise doubts as to  
 his impartiality so as to require his recusal. Id. at 250-51.  
 The court cautioned that

the logical extension and result of [defendant's]  
 argument would require [judicial] disqualification in a

substantial number of other proceedings. If, in fact, [a judge's] injuries and losses would cause a reasonable person to question [a judge's] ability to render impartial judgments on questions of automobile safety and defects, would it not also lead a litigant to raise questions about [a judge's] impartiality in any personal injury litigation involving an automobile? If the defendant's position were accepted, would it be proper for [a judge] to preside in any trial involving a serious personal injury claim, whether it stems from a motor vehicle collision, an aircraft disaster, an industrial explosion or any of an endless list of other types of accidents resulting in serious personal injury?

Id. at 251; see also id. ("The unfortunate incident which [the judge] experienced several years ago is, of course, lasting in nature, but it is no more lasting than some of the personal and background experiences of other trial judges where disqualification attempts were advanced by a litigant and denied.").

In Mann v. Thalacker, No. 95-3008, 1996 WL 33423405 (N.D. Iowa Oct. 9, 1996), the defendant, found guilty of kidnapping and attempted murder, asserted that the trial judge's failure to disclose his own history of sexual abuse and therein recuse himself kept defendant from making a knowing, voluntary waiver of his right to a jury trial. Id. at \*1. The court held that, because the incident took place more than twenty years prior to trial and the judge had openly spoke of the incident before the postconviction proceedings, no reasonable person could conclude that the judge would be perceived as being partial. Id. at \*9 (finding that although "[t]he trial judge was himself the victim of the crime of sexual abuse," because he "divulged the details of these acts . . . prior to the postconviction case" and "these experiences happened nearly twenty years prior to [defendant's] trial," "[u]nder these circumstances, this court does not believe that a reasonable person could conclude that the judge would be perceived as being disqualified under . . . section 455(a)").

The court in United States v. Robbins, 48 M.J. 745 (A.F. Ct. Crim. App. 1998), emphasized that "it is axiomatic that, the mere fact that a [judge] has been the victim of the type offense with which an accused is charged, standing alone, will not constitute sufficient grounds for recusal." See id. at 754. The court thus delineated the following three-prong standard in order to guide their recusal inquiry:

When the [] judge is asked to recuse himself or herself because he or she was the victim of a similar offense, the following factors must be weighed and balanced by the [] judge, as follows: 1) the time frame of the offense; was the [] judge victimized in the very recent past or

1 and when appealed, none of their decisions were overturned.

2 Unlike rulings or statements I may have made in this or  
3 other cases, however, this final ground urged for recusal is  
4 based on events that occurred outside the context of any judicial  
5 function or proceeding. Where the affidavit refers to  
6 extrajudicial sources, it may be sufficient to trigger the

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7  
8 the distant past?; 2) were the facts and surrounding  
9 circumstances of the crime especially egregious so as to  
10 inflame one's emotions at the expense of one's judicial  
11 instincts when recalling the event?; and, 3) if the  
12 answer to 2 is yes, would a reasonable person with  
knowledge of all of the relevant facts conclude that  
sufficient time has passed whereby the [] judge's  
judicial instincts and temperament are no longer  
compromised?

13 Id. at 754. In light of this criterion, the court held that  
14 there was no reasonable doubt that the judge under review, who  
15 was a past victim of spousal abuse, was impartial to current  
16 defendant charged with spousal abuse because: (1) "the events in  
17 question occurred 13 years prior to the trial," (2) "it is clear  
18 from the [judge's] responses that she was in no way inflamed at  
19 the prospect of being confronted with an instance of spouse  
20 abuse," and (3) "even if she were, at some point in her past,  
21 inflamed by her personal experience, [the court found] that a  
reasonable person would conclude from her answers that she has  
put the experience behind her and moved on." Id.; see also id.  
(commenting that "a reasonable person understands that judges are  
not grown in, and harvested from, a sterile, idyllic existence  
frequently referred to as the 'ivory tower'" but that "[i]n  
fact, our national experience supports the opposite conclusion,  
which is that the average citizen, civilian or military, prefers  
judges with real-life experiences").

22 Finally, in United States v. Zidar, 178 Fed. Appx. 673  
23 (9th Cir. 2006) [I have cited to this case even though it is an  
24 unpublished decision because it is nevertheless helpful in the  
25 analysis], the Ninth Circuit concluded that despite the judge's  
26 admission that two decades before the instant fraud and  
27 misrepresentation case she had brought an unrelated lawsuit that  
28 included claims of fraud and misrepresentation, the district  
court correctly found that "[n]o reasonable person could question  
[the judge's] impartiality in [defendant's] case merely because,  
twenty years earlier, she may have been a victim of an unrelated,  
factually dissimilar fraud." Id. at 678-79. Moreover, the court  
noted that "since then[, the judge] has presided impartially over  
'dozens' of cases involving allegations of fraud." Id.

provisions of 28 U.S.C. § 144. See United States v. Sibla, 624 F.2d 864, 868 (9th Cir. 1980) ("If that affidavit is sufficient on its face, the motion must be referred to another judge for a determination of its merits under section 144.").

Even if the assigned judge does not believe the stated grounds are valid, where the challenge is based on extrajudicial sources, I believe the more prudent approach is to refer the motion to another judge for decision. The "institutional integrity of the federal courts requires scrupulous protection of public confidence in the judicial process." United States v. Bosch, 951 F.2d 1546, 1551 (9th Cir. 1991) (O'Scannlain, J., dissenting); see also See First Interstate Bank of Ariz., N.A. v. Murphy, Weir & Butler, 210 F.3d 983, 985 (9th Cir. 2000) ("[J]udges . . . are required to preserve the court's impartiality and the appearance of impartiality.").<sup>3</sup> I will therefore ask the Chief Judge to refer this motion to another judge for decision.

#### Timeliness

Another issue which may have to be addressed by the judge who decides this motion is its timeliness. "A motion under section 144 must be timely, i.e., the motion should be made at

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<sup>3</sup> Perhaps in an effort to avoid even meritless accusations about the impartiality of rulings on recusal motions, the Western District of Washington requires automatic referral of all 28 U.S.C. § 144 recusal motions to a different judge. See W. Dist. of Wash. Local R. 8(c) ("Whenever a motion to recuse due to alleged bias or prejudice directed at a judge of this court is filed pursuant to 28 U.S.C. § 144, the clerk shall refer it to the chief judge. If the motion is directed at the chief judge, the clerk shall refer it to the next senior active judge. Before a ruling is made on a motion to recuse any judge, the challenged judge will be afforded an opportunity to review the motion papers and decide whether to recuse voluntarily.").

1 the earliest possible moment after obtaining facts demonstrating  
2 a basis for recusal." United States v. Bell, 79 F. Supp. 2d  
3 1169, 1172 (E.D. Cal. 1999) (finding that a recusal motion must  
4 be filed as soon as practical because "a prompt application  
5 affords the district judge an opportunity to assess the merits of  
6 the application before taking any further steps that may be  
7 inappropriate for the judge to take" and "avoids the risk that a  
8 party is holding back a recusal application as a fall-back  
9 position in the event of adverse rulings on pending matters")  
10 (internal citations and quotations omitted).

11       As shown by the attached news clipping, the incident at  
12 my home occurred in December of 1997. As such, it was public  
13 knowledge before the indictment in this case was filed and the  
14 case assigned to me. It appeared prominently on Page One of the  
15 Metro Section, with a photograph of me. While I cannot say with  
16 certainty that all defense counsel knew of it at the time, I know  
17 for certain that at least three of them did. Thongsouk Theng  
18 Lattanaphom's attorney, Jeffrey Staniels, acknowledged in court  
19 at the last hearing that he saw the article, and two of the  
20 attorneys for the defendants in this case actually represented  
21 the young men who burglarized me in the state court proceeding.  
22 Son Van Nguyen's first attorney, James Greiner, represented one  
23 of the young men, and Bao Lu's first attorney, Robert Peters,  
24 represented the other. Mr. Greiner and Mr. Peters would not only  
25 have been privy to the information in the news article, but had  
26 to be intimately familiar with all of the details of the crime of  
27 which I was the victim.

28       Although I recognize that none of those respected

1 attorneys are the moving force behind the instant motion, if they  
2 thought there was any merit to it, they could have brought the  
3 motion nine years ago. Instead, none of the defendants or their  
4 attorneys raised it for the first time until now.

5 Further, Minh Huynh, who is the moving force behind the  
6 motion, has acknowledged in his affidavit that he personally knew  
7 about the incident at my home before his trial began. He states  
8 specifically:

9 Special Agent Dupre (FBI), the leading agent in this case  
10 had warned me, during a deal negotiation session before  
11 trial, that Judge Shubb was a victim of a home-invasion  
robbery, and that if I don't take the deal, Judge Shubb will  
whack me.

12 (Minh Huynh Aff., Mar. 24, 2008, ¶ 11 (emphasis added)). Minh  
13 Huynh, it must be remembered, was representing himself pro se  
14 when the trial began. He can hardly suggest that anything his  
15 attorney said or did precluded him from making the motion. Yet  
16 he failed to raise this ground, or any other ground,<sup>4</sup> to  
17 disqualify me as the trial judge at that time.

18 "It is enough to say that § 144 makes timely filing of  
19 affidavits of bias and prejudice of the essence for the obvious  
20 purpose of preventing their use as a device to obtain last minute  
21 postponements of trial and to prevent a litigant from sampling  
22 the temper of the court before deciding whether or not to file an  
23 affidavit of prejudice." Peckham v. Ronrico Corp., 288 F.2d 841,

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24  
25 <sup>4</sup> It is also clear that Minh Huynh knew about the  
26 firebomb case before the trial began, because he states in his  
27 Reply brief that at the time of his meeting with Agent Dupre  
28 before trial he was afraid I would not accept the government's  
recommendation based upon what he knew about the sentence in the  
firebomb case. Yet he also failed to raise that ground until  
now.

1 843 (1st Cir. 1961); see also First Nat'l Bank of Peoria v.  
2 Muller, 851 F.2d 916, 919 (7th Cir. 1988) (movant waived any  
3 grounds for making a recusal motion where movant knew the facts  
4 at a preliminary hearing and proceeded to trial without objection  
5 and raised the bias issue only after the judge's unfavorable  
6 ruling).

7           At the time this case was first assigned to me, I was  
8 an active judge of this court. Under Canon 3 of the Code of  
9 Conduct for United States Judges, a judge must hear and decide  
10 all matters assigned to him, unless disqualified. Thus, as much  
11 of a burden as it was upon me,<sup>5</sup> I have conducted countless court  
12 appearances, heard and decided hundreds of motions, and presided  
13 over months of trial testimony with contentious objections in  
14 this case. I must admit that during all that time it never  
15 crossed my mind that having been the victim of a crime in 1997  
16 could have relieved me altogether of the responsibility for this  
17 case.

18           Defendants seem to think I enjoy sitting in judgment on  
19 them. Nothing could be further from the truth. This case has  
20 taken up more of my time and worked more havoc with my calendar  
21 than any other case I have had in the seventeen years I have been  
22 on the bench. I get no more credit for handling this case than I  
23 would for any other case in which the defendants just walk into  
24 court, plead guilty, and are sentenced. Yet I have had to spend  
25 hundreds of hours on it. Hardly a day has gone by when I do not  
26 worry about what motions or other procedural maneuvers the

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27  
28 <sup>5</sup> This court has the second highest weighted caseload per  
judge of any district in the United States.

1 defendants will come up with next. If the defendants had raised  
2 my prior experience as a ground for recusal when they first could  
3 have, and if it had any merit, I would have welcomed the  
4 opportunity to withdraw from this case. But they never gave me  
5 that chance until now.

6 Conclusion

7 All federal judges take an oath to "administer justice  
8 without respect to persons, and do equal right to the poor and to  
9 the rich. . ." 28 U.S.C § 453. We take that oath seriously. No  
10 judge I know appreciates being charged with bias or unfairness.  
11 Anyone who would seriously think that I could let this kind of  
12 unrelated personal experience affect my impartiality as a judge  
13 in this case doesn't understand the first thing about me or what  
14 it means to be a judge. Nevertheless, for the reasons discussed  
15 above, I will defer the question of whether I am qualified to sit  
16 on this case to the sound judgment of another judicial officer.

17 IT IS THEREFORE ORDERED that defendants' motion to  
18 disqualify me as the trial judge in this matter is referred to  
19 the Chief Judge for assignment to another judge for decision. I  
20 will not consider any of the pending motions; hear any other  
21 motions, applications, or requests; sentence any of the  
22 defendants; or perform any other judicial duties in this case or

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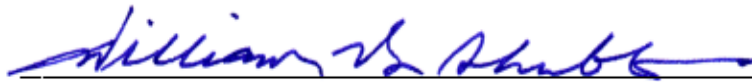
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28 the related cases in Cr. No. S-96-350, Cr. No. S-99-74, Cr. No.



1 S-98-233, Cr. No. S-99-148, Cr. No. S-99-149, Civ. No. S-07-1162,  
2 and Civ. No. S-07-2063 until this motion has been finally  
3 resolved. A copy of this order shall be filed in each of those  
4 cases.

5 DATED: May 2, 2008

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8 WILLIAM B. SHUBB  
9 UNITED STATES DISTRICT JUDGE  
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EXHIBIT A

**JUDGE CONFRONTS BURGLARS IN SOUTH LAND PARK HOME** *Origin Cynthia*

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FINAL Dateline Corrections Memo Body Text William B. Shubb, chief judge of the U.S.

District Court in Sacramento, surprised two young burglars when he went to his South Land Park home Friday for an early lunch.

Shubb, 59, confronted and conversed with the men before they tackled him and escaped with some of his belongings, police said.

"The judge is not injured, except perhaps his pride a little bit," said Mike Nelson, chief deputy U.S. marshal for the Eastern District of California.

Audrey Lee, a Sacramento police spokeswoman, said Shubb encountered the unarmed intruders in a room off of his garage. The judge's wife was not home at the time, Nelson said.

"They sat him down, and I guess he made conversation. He said, "Don't take that; it's just a keepsake," " said Lee.

"I guess they took what they needed and left."

Before doing so, said Nelson, the burglars tackled Shubb and ran off. He then dialed 911.

"He may be pretty short and small, but he's tough," Nelson said of the judge. Graphic Text William B. Shubb

Burglars tackled the federal judge and escaped with some of his belongings. Keywords